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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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AZ Corporation Commission
Director Of Utilities

IN THE MATTER OF THE APPLICATION OF
AZTECH COMMUNICATIONS, INC. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE RESOLD LONG
DISTANCE AND FACILITIES-BASED LOCAL
EXCHANGE SERVICES IN THE STATE OF
ARIZONA AND PETITION FOR COMPETITIVE
CLASSIFICATION OF PROPOSED SERVICES.

DOCKET NO. T-04266A-04-0466

DECISION NO. 67750

OPINION AND ORDER

DATE OF HEARING:

February 3, 2005

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Gregory Garlick¹

APPEARANCES:

Mr. Michael Patten, ROSHKA, HEYMAN &
DeWULF, on behalf of Aztech Communications,
Inc.; and

Ms. Janet Wagner, Staff Attorney, Legal
Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

BY THE COMMISSION:

On June 23, 2004, Aztech Communications, Inc. ("Applicant" or "Aztech") submitted to the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate") to provide resold long distance and facilities-based local exchange telecommunications services within the State of Arizona. The application petitioned the Commission for determination that its proposed services should be classified as competitive.

On November 26, 2004, the Commission's Utilities Division Staff ("Staff") filed a Staff Report recommending approval of Aztech's application subject to certain conditions.

On December 7, 2004, by Procedural Order, the hearing in this matter was scheduled for February 3, 2005.

¹ The Opinion and Order was prepared by Marc E. Stern.

1 On February 3, 2005, a public hearing was held before a duly authorized Administrative Law
2 Judge of the Commission at its offices in Phoenix, Arizona. Applicant and Staff appeared with
3 Counsel. At the conclusion of the hearing, the matter was taken under advisement pending
4 submission of a Recommended Opinion and Order to the Commission.

5 * * * * *

6 Having considered the entire record herein and being fully advised in the premises, the
7 Commission finds, concludes, and orders that:

8 **FINDINGS OF FACT**

9 1. On June 23, 2004, Aztech filed with the Commission an application for a Certificate to
10 provide facilities-based local exchange and resold long distance telecommunications services within
11 the State of Arizona². The application petitioned the Commission for a determination that its
12 proposed services should be classified as competitive.

13 2. Aztech is an Arizona corporation.

14 3. On November 26, 2004, Staff filed its Staff Report, which recommended approval of
15 the application and included a number of additional recommendations.

16 4. On December 7, 2004, by Procedural Order, this matter was set for hearing on
17 February 3, 2005.

18 5. On January 11, 2005, Applicant filed an Affidavit of Publication that complies with
19 Commission rules. Notice was provided only in Mohave County where Aztech intends to provide
20 service.

21 6. Applicant has the technical capability to provide the services that are proposed in its
22 application.

23 7. Currently there are several incumbent providers of local exchange and interexchange
24 services in the service territory requested by Applicant, and numerous other entities have been
25 authorized to provide competitive local and interexchange services in all or portions of that territory.

26 8. It is appropriate to classify all of Applicant's authorized services as competitive.

27
28 ² During the hearing, Applicant amended its application limiting service only to Mohave County where it provided notice.

1 9. The Staff Report stated that Applicant has no market power and the reasonableness of
2 its rates would be evaluated in a market with numerous competitors.

3 10. According to Staff, Aztech submitted unaudited financial statements for the eight
4 month period ending September 3, 2004. These financial statements list assets in excess of \$2.6
5 million, equity in excess of \$2.5 million, and a net loss of \$716.66.

6 11. Staff recommends that Aztech's application for a Certificate to provide competitive
7 facilities-based local exchange and resold long distance telecommunications services be granted
8 subject to the following conditions:

- 9
- 10 (a) that, unless Aztech provides services solely through the use of its own
11 facilities, the Applicant procure an interconnection agreement before being
12 allowed to offer local exchange service. The interconnection agreement should
13 be procured within 365 days of the effective date of the Order in this matter or
14 30 days prior to the provision of service, whichever comes first, and must
15 remain in effect until further Order of the Commission. If the Applicant
16 provides services solely through the use of its own facilities, no other
17 information shall be required once the Applicant informs the Commission of
18 that fact by filing a letter with the Commission's Docket Control Center under
19 the same timeframe and provision of service criteria as above;
- 20 (b) that Aztech be ordered to file with the Commission, within 365 days of the
21 effective date of the Order in this matter or 30 days prior to the provision of
22 service, whichever comes first, its plan to have its customers' telephone
23 numbers included in the incumbent's Directories and Directory Assistance
24 databases;
- 25 (c) that Aztech be ordered to pursue permanent number portability arrangements
26 with other LECs pursuant to Commission rules, federal laws and federal rules;
- 27 (d) that Aztech be ordered to abide by and participate in the AUSF mechanism
28 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-
00000E-95-0498);
- (e) that Aztech be ordered to abide by the quality of service standards that were
approved by the Commission for Qwest in Docket No. T-0151B-93-0183;
- (f) that in areas where it is the sole provider of local exchange service facilities,
Aztech be ordered to provide customers with access to alternative providers of
service pursuant to the provisions of Commission rules, federal laws and
federal rules;
- (g) that Aztech be ordered to certify, through the 911 service provider in the area
in which it intends to provide service, that all issues associated with the
provision of 911 service have been resolved with the emergency service
providers before it begins to provide local exchange service. This certification
should be filed with the Commission within 365 days of an Order in this matter

or 30 days prior to the provision of service, whichever comes first, which certification must remain in effect until further Order of the Commission;

- (h) that Aztech be ordered to abide by all the Commission decisions and policies regarding CLASS services;
- (i) that Aztech be ordered to provide 2-PIC equal access;
- (j) that Aztech be required to notify the Commission immediately upon changes to its name, address or telephone number;
- (k) that Aztech be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;
- (l) that Aztech be ordered to maintain its accounts and records as required by the Commission;
- (m) that Aztech be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
- (n) that Aztech be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
- (o) that Aztech be ordered to cooperate with Commission investigations including, but not limited to, customer complaints; and
- (p) that Aztech be subject to the Commission's rules and the 1996 Telecommunications Act to the extent that they apply to CLECs and interexchange carriers.

12. Staff further recommended that Aztech's Certificate be conditioned upon Aztech filing conforming tariffs in accordance with this Decision within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever occurs first.

13. Based on Aztech's tariffs which indicates that it will collect from its customers an advance, deposit and/or prepayment, Staff also is recommending the following:

- (1) Aztech procure a performance bond equal to \$110,000. The minimum bond amount of \$110,000 should be increased in increments of \$55,000 whenever the total amount of the advances, deposits and prepayments is within \$11,000 of the bond amount;
- (2) Aztech docket proof of the performance bond within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect until further Order of the Commission;

- 1 (3) if Aztech desires to discontinue service, it should be required to file an
2 application with the Commission pursuant to A.A.C. R14-2-1107³; and
3 (4) Aztech should be required to notify each of its local exchange customers and
4 the Commission 60 days prior to filing an application to discontinue service
pursuant to A.A.C. R14-2-1107; and any failure to do so should result in
forfeiture of the Applicant's performance bond.

5 14. Staff further recommended that if any of the above timeframes are not met, that
6 Aztech's Certificate should become null and void without further Order of the Commission and no
7 time extensions for compliance should be granted.

8 15. At the hearing, Aztech agreed to provide its services in accordance with Staff's
9 recommendations.

10 16. In its Staff Report, Staff stated that based on information obtained from the Applicant,
11 it has determined that Aztech's fair value rate base ("FVRB") is zero and is not useful in a fair value
12 analysis, and is not useful in setting rates. Staff further stated that in general, rates for competitive
13 services are not set according to rate of return regulation. Staff has reviewed the rates to be charged
14 by the Applicant and believes they are just and reasonable as they are comparable to other
15 competitive local carriers, local incumbent carriers and several long distance carriers operating in
16 Arizona. Therefore, while Staff considered the FVRB information submitted by the Applicant, the
17 FVRB information provided should not be given substantial weight in this analysis.

18 17. The rates to be ultimately charged by Aztech will be heavily influenced by the market.
19 Because of the nature of the competitive market and other factors, a fair value analysis is not
20 necessarily representative of the company's operations.

21 18. Staff believes that Aztech has no market power and that the reasonableness of its rates
22 will be evaluated in a market with numerous competitors. In light of the competitive market in which
23 the Applicant will be providing its services, Staff believes that the rates in Applicant's proposed
24 tariffs for its competitive services will be just and reasonable, and recommends that the Commission
25 approve them.

26 19. Staff's recommendations, as set forth herein, are reasonable.

27 ³ Pursuant to A.A.C. R14-2-1107, the Applicant is required to comply and obtain Commission authorization of
28 compliance with all of the requirements, including but not limited to the notice requirements, prior to discontinuance of
service and/or abandonment of its service area.

20. Aztech's fair value rate base is determined to be zero for purposes of this proceeding.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. A.R.S. § 40-282 allows a telecommunications company to file an application for a Certificate to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth in its application.

6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide competitive facilities-based local exchange and resold long distance telecommunications services in Arizona as conditioned by Staff's recommendations.

7. The telecommunications services that the Applicant intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

10. Aztech's competitive rates, as set forth in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of Aztech Communications, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based local exchange and resold long distance telecommunications services in Mohave County, Arizona shall be,

1 and is hereby, granted, conditioned upon Aztech Communications, Inc.'s timely compliance with the
2 following three Ordering Paragraphs.

3 IT IS FURTHER ORDERED that Aztech Communications, Inc. shall file conforming tariffs
4 in accordance with this Decision within 365 days of this Decision or 30 days prior to providing
5 service, whichever comes first.

6 IT IS FURTHER ORDERED that Aztech Communications, Inc. shall procure a performance
7 bond equal to \$110,000 the earlier of 365 days from the effective date of this Order or 30 days prior
8 to the commencement of service.

9 IT IS FURTHER ORDERED that Aztech Communications, Inc. shall comply with all of the
10 Staff recommendations set forth in the above-stated Findings of Fact and Conclusions of Law.

11 IT IS FURTHER ORDERED that if Aztech Communications, Inc. fails to meet the
12 timeframes outlined in the Ordering Paragraphs above, that the Certificate of Convenience and
13 Necessity conditionally granted herein shall become null and void without further Order of the
14 Commission.

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IT IS FURTHER ORDERED that if Aztech Communications, Inc. fails to notify each of its customers and the Commission at least 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107, that in addition to voidance of its Certificate of Convenience and Necessity, Aztech Communications, Inc.'s performance bond shall be forfeited.

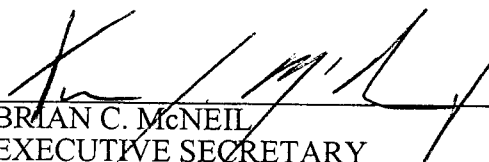
IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

 CHAIRMAN  COMMISSIONER  COMMISSIONER

 COMMISSIONER  COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 11th day of April, 2005.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

MES:mj

1 SERVICE LIST FOR: AZTECH COMMUNICATIONS, INC.

2 DOCKET NO.: T-04266A-04-0466

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